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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09.892.765	06.28.2001	Muniyapla Eswarappa	2551.2	3454

5514 7590 10 03 2002

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[REDACTED] EXAMINER

GREENE, JASON M

ART UNIT	PAPER NUMBER
1724	5

DATE MAILED: 10/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/892,765	ESWARAPPA, MUNIYAPLA
	Examiner Jason M. Greene	Art Unit 1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133)
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) _____ is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 June 2001 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by French Patent FR 747,042.

With regard to claim 1, FR 747,042 discloses a filter platform for allowing attachment of an air filter unit thereto, the filter platform comprising a substantially hollow outer housing, the housing forming a chamber within the platform, the housing having a first opening (3) at one end for engaging the platform with a respirator so as to allow air to flow between the chamber and the respirator, and a second opening (2) for engaging the platform with the air filter unit so as to allow filtered air to flow into the

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chamber, a respirator connection member (not numbered, threaded portion of 3) located in association with the first opening, the respirator connection member being structured to sealingly engage the first opening to an input of the respirator, and a filter connection member (not numbered, threaded portion of 2) located in association with the second opening, the filter connection member being structured to sealingly engage the second opening with the filter unit in Figs. 1 and 2 and page 1, col. 1, line 1 to page 2, col. 1, line 15.

With regard to claim 2, FR 747,042 discloses the housing having a third opening (3) at an end of the housing opposite the first opening, the third opening having means (5,6,7 in Fig. 1 or 6,9,10,11 in Fig. 2) for opening and closing the third opening in Figs. 1 and 2 and page 1, col. 1, line 1 to page 2, col. 1, line 15.

3. Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Palazzotto et al.

With regard to claim 1, Palazzotto et al. discloses a filter platform (50) for allowing attachment of an air filter unit (46) thereto, the filter platform comprising a substantially hollow outer housing (70), the housing forming a chamber within the platform, the housing having a first opening (not numbered) at one end for engaging the platform with a respirator so as to allow air to flow between the chamber and the respirator, and a second opening (not numbered) for engaging the platform with the air

filter unit so as to allow filtered air to flow into the chamber, a respirator connection member (82) located in association with the first opening, the respirator connection member being structured to sealingly engage the first opening to an input (38) of the respirator, and a filter connection member (86) located in association with the second opening, the filter connection member being structured to sealingly engage the second opening with the filter unit in Figs. 3-5, col. 6, lines 30-59, and col. 7, line 7 to col. 8, line 32.

With regard to claim 2, Palazzotto et al. discloses the housing having a third opening (not numbered, aperture through which leads 76 pass) at an end of the housing opposite the first opening, the third opening having means (76) for opening and closing the third opening in Figs. 3-5, col. 6, lines 30-59, and col. 7, line 7 to col. 8, line 32. The leads (76) are seen as being means for opening and closing the third opening since the opening is open before the leads are inserted and the opening is closed after the leads are inserted.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Müller et al. Müller et al. discloses a filter platform (2) for allowing attachment of an air filter unit thereto, the filter platform comprising a substantially hollow outer housing, the housing forming a chamber within the platform, the housing having a first opening (4) at one end for engaging the platform with a respirator so as to allow air to flow between the chamber and the respirator, and a second opening (5) for engaging the platform

with the air filter unit so as to allow filtered air to flow into the chamber, a respirator connection member (not numbered, threaded portion of 4) located in association with the first opening, the respirator connection member being structured to sealingly engage the first opening to an input of the respirator, and a filter connection member (not numbered, threaded portion of 5) located in association with the second opening, the filter connection member being structured to sealingly engage the second opening with the filter unit in Fig. 1 and col. 2, lines 45-62.

5. Claims 3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Schwartz '834.

With regard to claim 3, Schwartz '834 discloses a filter unit comprising a substantially hollow filter pad having first and second walls (17) made of filter material, and an annular edge member (10) spacing apart the first and second walls, each of the first and second walls being sealingly engaged to the annular edge member, the annular edge member having an opening (15) for allowing filtered air to pass out of the filter unit, the annular edge member extending around all of the periphery of the filter pad, and a connection member (not shown) located in association with the opening, for connecting the filter unit to a source of suction in Figs. 1 and 2 and page 1, col. 1, line 1 to page 1, col. 2, line 40.

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With regard to claim 6, Schwartz '834 discloses a filter unit comprising a substantially hollow filter pad having first and second walls (17) made of filter material and an annular edge member (10) spacing apart the first and second walls, each of the first and second walls being sealingly engaged to the annular edge member fully, the annular edge member having an opening (15) and means (not shown) for connecting the filter unit to a respirator or source of suction, without additional or intermediary connecting structure in Figs. 1 and 2 and page 1, col. 1, line 1 to page 1, col. 2, line 40.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over French Patent FR 747,042, Palazzotto et al., or Müller et al. in view of Schwartz '834.

With regard to claim 4, FR 747,042 discloses a filter unit for filtering air to be fed to a respirator through a filter platform comprising an outer housing, the housing forming a chamber within the filter platform, the housing having a first opening (3) at one end of the housing for engaging the platform with a respirator so as to allow air to

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flow between the chamber and the respirator, and a second opening (2) for engaging the platform with the air filter unit so as to allow filtered air to flow into the chamber, a respirator connection member (not numbered, threaded portion of 3) located in association with the first opening, the respirator connection member being structured to sealingly engage the first opening to an input of the respirator, and a filter connection member (not numbered, threaded portion of 2) located in association with the second opening, the filter connection member being structured to sealingly engage the second opening with the filter unit in Figs. 1 and 2 and page 1, col. 1, line 1 to page 2, col. 1, line 15.

Palazzotto et al. discloses a filter unit for filtering air to be fed to a respirator through a filter platform (50) comprising an outer housing (70), the housing forming a chamber within the filter platform, the housing having a first opening (not numbered) at one end of the housing for engaging the platform with a respirator so as to allow air to flow between the chamber and the respirator, and a second opening (not numbered) for engaging the platform with the air filter unit so as to allow filtered air to flow into the chamber, a respirator connection member (82) located in association with the first opening, the respirator connection member being structured to sealingly engage the first opening to an input (38) of the respirator, and a filter connection member (86) located in association with the second opening, the filter connection member being structured to sealingly engage the second opening with the filter unit in Figs. 3-5, col. 6, lines 30-59, and col. 7, line 7 to col. 8, line 32.

Müller et al. discloses a filter unit for filtering air to be fed to a respirator through a filter platform (2) comprising an outer housing, the housing forming a chamber within the filter platform, the housing having a first opening (4) at one end of the housing for engaging the platform with a respirator so as to allow air to flow between the chamber and the respirator, and a second opening (5) for engaging the platform with the air filter unit so as to allow filtered air to flow into the chamber, a respirator connection member (not numbered, threaded portion of 4) located in association with the first opening, the respirator connection member being structured to sealingly engage the first opening to an input of the respirator, and a filter connection member (not numbered, threaded portion of 5) located in association with the second opening, the filter connection member being structured to sealingly engage the second opening with the filter unit in Fig. 1 and col. 2, lines 45-62.

French Patent FR 747,042, Palazzotto et al., and Müller et al. do not disclose the filter unit comprising a substantially hollow filter pad having first and second walls made of filter material, and an annular edge member spacing apart the first and second walls, each of the first and second walls being sealingly engaged to the annular edge member, the annular edge member having an opening for engaging the filter unit with the second opening of the filter platform, and a platform connection member located in association with the opening for engaging, the platform connection member being structured to sealingly engage the filter unit with the filter connection member of the platform.

Schwartz '834 discloses a filter unit comprising a substantially hollow filter pad having first and second walls (17) made of filter material, and an annular edge member

(10) spacing apart the first and second walls, each of the first and second walls being sealingly engaged to the annular edge member, the annular edge member having an opening (15) for engaging the filter unit with the second opening of the filter platform, and a platform connection member (not shown) located in association with the opening for engaging, the platform connection member being structured to sealingly engage the filter unit with the filter connection member of the platform in Figs. 1 and 2 and page 1, col. 1, line 1 to page 1, col. 2, line 40.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the filter unit of Schwartz '834 into the filter platform of French Patent FR 747,042, Palazzotto et al., or Müller et al. to provide a filter unit which effectively filter the air while offering a minimum resistance to breathing, as suggested by Schwartz in col. 1, lines 8-19.

With regard to claim 5, FR 747,042 discloses a filter comprising a filter unit comprising a filter pad and a filter platform comprising a substantially hollow outer housing, the housing forming a chamber within the platform, the housing having a first opening (3) at one end of the housing for engaging the platform with a respirator so as to allow air to flow between the chamber and the respirator, and a second opening (2) for engaging the platform with the air filter unit so as to allow filtered air to flow into the chamber, a respirator connection member (not numbered, threaded portion of 3) located in association with the first opening, the respirator connection member being structured to sealingly engage the first opening to an input of the respirator, and a filter

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connection member (not numbered, threaded portion of 2) located in association with the second opening, the filter connection member being structured to sealingly engage the second opening with the filter unit in Figs. 1 and 2 and page 1, col. 1, line 1 to page 2, col. 1, line 15.

Palazzotto et al. discloses a filter comprising a filter unit comprising a filter pad and a filter platform (50) comprising a substantially hollow outer housing (70), the housing forming a chamber within the platform, the housing having a first opening (not numbered) at one end of the housing for engaging the platform with a respirator so as to allow air to flow between the chamber and the respirator, and a second opening (not numbered) for engaging the platform with the air filter unit so as to allow filtered air to flow into the chamber, a respirator connection member (82) located in association with the first opening, the respirator connection member being structured to sealingly engage the first opening to an input of the respirator, and a filter connection member (86) located in association with the second opening, the filter connection member being structured to sealingly engage the second opening with the filter unit in Figs. 3-5, col. 6, lines 30-59, and col. 7, line 7 to col. 8, line 32.

Müller et al. discloses a filter comprising a filter unit comprising a filter pad and a filter platform (2) comprising a substantially hollow outer housing, the housing forming a chamber within the platform, the housing having a first opening (4) at one end of the housing for engaging the platform with a respirator so as to allow air to flow between the chamber and the respirator, and a second opening (5) for engaging the platform with the air filter unit so as to allow filtered air to flow into the chamber, a respirator

connection member (not numbered, threaded portion of 4) located in association with the first opening, the respirator connection member being structured to sealingly engage the first opening to an input of the respirator, and a filter connection member (not numbered, threaded portion of 5) located in association with the second opening, the filter connection member being structured to sealingly engage the second opening with the filter unit in Fig. 1 and col. 2, lines 45-62.

French Patent FR 747,042, Palazzotto et al., and Müller et al. do not disclose the filter being a substantially hollow filter pad having first and second walls made of filter material, and an annular edge member spacing apart the first and second walls, each of the first and second walls being sealingly engaged to the annular edge member, the annular edge member having an opening for allowing filtered air to pass out of the filter unit, and a platform connection member located in association with the opening for allowing filtered air to pass.

Schwartz '834 discloses a substantially hollow filter pad having first and second walls (17) made of filter material, and an annular edge member (10) spacing apart the first and second walls, each of the first and second walls being sealingly engaged to the annular edge member, the annular edge member having an opening (15) for allowing filtered air to pass out of the filter unit, and a platform connection member (not shown) located in association with the opening for allowing filtered air to pass in Figs. 1 and 2 and page 1, col. 1, line 1 to page 1, col. 2, line 40.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the filter unit of Schwartz '834 into the filter device

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of French Patent FR 747,042, Palazzotto et al., or Müller et al. to provide a filter unit which effectively filter the air while offering a minimum resistance to breathing, as suggested by Schwartz in col. 1, lines 8-19.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartz '834 in view of Palazzotto.

Schwartz '834 discloses the filter unit being structured to allow connection to the respirator or source of suction without additional or intermediary connecting structure in Figs. 1 and 2 and page 1, col. 1, line 1 to page 1, col. 2, line 40.

Schwartz '834 does not explicitly disclose the filter unit being structured to allow connection to the respirator or source of suction in parallel with, or at predetermined orientations, angles, and positions with respect to the respirator or source of suction, with or without additional or intermediary connecting structure.

Palazzotto et al. discloses a respirator wherein the filter unit (46) is connected to the respirator by means of a bayonet connection (84,86) provided on the filter unit and an additional connecting structure (50) in Figs. 3-5, col. 6, lines 30-59, and col. 7, line 7 to col. 8, line 32.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the bayonet connecting means of Palazzotto et al. into the filter unit of Schwartz '834 to allow the filter element to be secured to the respirator using a convenient and reliable bayonet connection.

As shown by Palazzotto in Figs. 4 and 5, the bayonet connection comprises a plurality of hooks (84,86) provided on the filter unit and on the additional connecting structure. The bayonet connection is first made by inserting the filter unit onto the connecting structure in such a manner that the hooks provided on the filter unit and the hooks provided on the connecting structure do not overlap. The filter element is then rotated in either a clockwise or counterclockwise direction until the hooks provided on the filter unit overlap the hooks provided on the connecting structure to complete the bayonet connection. As can be appreciated from Fig. 4 of Palazzotto et al., the filter unit can be connected to the connecting structure in as many orientations as there are hooks since any hook provided on the filter unit can be oriented to engage any hook on the connecting structure. Therefore, if the hooks (84) of the filter unit of Palazzotto et al. were incorporated into the filter element of Schwartz '834, the filter unit of Schwartz '834 could be connected to the respirator, through the additional connecting structure, in parallel with or at predetermined orientations, angles, and portions with respect to the respirator by selecting the locations of the hooks provided on the connecting structure and the respirator.

Double Patenting

9. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

10. Claims 1 and 2 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 and 2 of copending Application No. 09/930,953. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim 1 of copending Application No. 09/930,953 reads word for word on claim 1 of the instant application except that claim 1 of Application No. 09/930,953 does not recite the filter platform being for allowing attachment of an air filter unit thereto in the preamble. However, claim 1 of Application No. 09/930,953 explicitly states that the filter unit is connected to the second opening of the filter platform. Therefore, while claim 1 of Application No. 09/930,953 does not recite the filter platform being for allowing attachment of an air filter unit thereto in the preamble, such is an inherent feature of the filter platform of claim 1 of Application No. 09/930,953. Therefore, the claim 1 of the instant application and claim 1 of Application No. 09/930,953 are seen as being identical claims.

Claim 2 of copending Application No. 09/930,953 reads word for word on claim 2 of the instant application except that claim 2 of the instant Application does not recite

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the third opening being adopted. Since neither the specification of the instant application nor the specification of Application No. 09/930,953 mentions the word "adopted", the Examiner has assumed that the limitation as recited in claim 2 of Application No. 09/930,953 is intended to mean that the third opening is adopted for a particular purpose, such as accommodating a pressure sensor. While claim 2 of the instant application does not explicitly disclose the third opening being adopted, the third opening is inherently adopted to perform a particular function. The term "adopted" is seen as being very broad and can be construed to mean that the third opening is present in the filter platform to perform any desired function. Since the third opening is included as a part of the filter platform as claimed in claim 2 of the instant application, the third opening must have an intended purpose or it would not be included as an integral feature of the claimed filter platform. Therefore the third opening is seen as being inherently adopted and claim 2 of the instant application and claim 2 of Application No. 09/930,953 are seen as being identical claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Pereira et al. and Rekow et al. references disclose similar filter devices.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Greene whose telephone number is (703) 308-6240. The examiner can normally be reached on Tuesday - Friday (7:00 AM to 5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Simmons can be reached on (703) 308-1972. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Jason M. Greene
Examiner
Art Unit 1724



jmg
September 27, 2002